

REMARKS

Claims 22-24, 29, and 31 stand rejected in the Final Office Action as obvious over the combination of Bui '256 (U.S. 2004/0040256) and the DE publication to Jacobs (DE '190). Claims 33-40 stand rejected over the combination of Bui '256 (U.S. 2004/0040256), the DE '190 publication, and further in view of O'neal '021 and Kushida '045.

In the obviousness rejection, the Examiner states that the DE '190 reference discloses a "building construction" for protection from radiation that includes a layered sandwich configuration. The Examiner notes, however, that the DE '190 reference does not disclose that the layer of gypsum anti-radiation material is poured and compressed between a concrete layer and an opposite layer. The Examiner cites Bui '256 as disclosing "one layer of gypsum material is poured and compressed between a concrete layer and an opposite layer of concrete." The Examiner then states that the "time of pouring such as a sheet pile wall installed during construction of the building construction has not been shown to be critical. Applicant is not claiming a method of making and this method is not shown to be critical and relevant to the construction." In view of these holdings, the Examiner states that it would have been obvious to modify the construction of Bui '256 to include the gypsum anti-radiation material of Jacobs "to cover the walls and make them safe."

Claim 22 expressly calls for "a building construction", in other words, a "constructed building." Claim 22 does not call for a component that may be subsequently used to construct a building or structure. Bui '256 modified to include an anti-radiation gypsum material only provides a stiffened panel that is intended to be

brought later to a construction site and combined with other panels. Bui '256 discloses a panel 100 that includes two primary elements: a cementitious plate 110 and a stiffening system 120. The purpose of the stiffening system 120 is to absorb and transfer stress in horizontal and vertical directions placed on the cement plate 110 so that the cement plate 110 "needs not be thick or heavy to withstand the stress load." The reference describes that the cementitious plate 110 may be formed of a flat gypsum core 112 sandwiched between layers of fiber reinforced cement 114, as shown in Fig. 2B. However, modifying Bui '256 so that the gypsum core 112 includes anti-radiation material, as suggested by the DE '190 reference, does not result in a combination of elements in accordance with independent claim 22. The resulting combination merely results in a stiffened panel having a cement plate 110 attached to a stiffening system 120. This plate is not a "building construction" (i.e. constructed building), but is simply a panel intended to be brought to a construction site and assembled with other panels.

Also, Bui '256 does not teach or suggest that the gypsum core layer 112 of the cement plate 110 is poured and compressed between a concrete layer and an opposite layer, as asserted by the Examiner. The reference describes various embodiments as to how the stiffening grid system 120 may be attached or embedded into one of the cement layers of the panel 100, but the reference appears to be silent as to forming the layered sandwich plate construction with a gypsum core layer. The reference does not teach or suggest that the gypsum layer is poured and compressed between opposite layers. In fact, the plate 110 of Bui '256 cannot stand alone, but must be supported by the stiffening grid system 120. Thus, even with the combination suggested by the Examiner, another relevant limitation of claim 22 is completely missing.

Applicant also respectfully submits that the limitations in claim 22 calling for the gypsum anti-radiation material to be "poured and compressed" between the concrete layer and an opposite layer of concrete or sheet pile wall during construction of the building construction presents definite structural limitations that are entitled to patentable consideration. A constructed building wherein at least one of the components of the building is formed during construction of the building by pouring and compressing gypsum anti-radiation material between opposite walls is a substantially different type of structure than the modular stiffened panel of Bui '256. With the building construction of claim 22, the cement walls, or one cement wall and opposite sheet pile wall are first constructed at the construction site with a space between the components. After the walls are built, the anti-radiation gypsum material is poured into the space and compressed therein. Thus, it is important to understand that the walls must have structural rigidity to resist the pressure of compressing the gypsum between the walls. This is a fundamentally different structure as compared to Bui '256, wherein the sandwiched plate 110 cannot stand alone, but must receive its stiffness by the stiffening system or gird 120 that is subsequently embedded into one of the cement layers of the plate 110. The Federal Circuit Court of Appeals has long recognized that functional language is a legitimate means of expressing meaningful limitations in an apparatus claim. For example, the Examiner's attention is drawn to K-2 Corp. v. Salomon S.A., 191 F.3d 1356 (Fed. Cir. 1999), wherein the Federal Circuit Court of Appeals recognized and held that functional language may be appropriate in an apparatus claim where such language tells one skilled in the art something about the structural requirements of the attachment between the different components. See also,

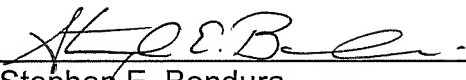
Microprocessor Enhancement Corp. v. Texas Instruments, Inc., 520 F.3d 1367 (Fed. Cir. 2008).

Thus, independent claim 22 calls for a building construction (i.e. constructed building) wherein during construction thereof, at least one of the components is formed by pouring and compressing gypsum anti-radiation material between a concrete layer and an opposite layer. This construction technique yields a significantly different structure as compared to the modular plate 110 of Bui '256, which is intended to have a cement panel 100 that is "significantly reduced" in weight and thickness because it is bonded or attached to a stiffening girder or grid system 120, wherein the plates are then later connected together or attached to frame structure at a construction site. Applicant respectfully submits that independent claim 22 patentably distinguishes over Bui '256 alone or as modified to include an anti-radiation gypsum material. Favorable reconsideration of the final rejection is respectfully requested. Claims 23, 24, 29, 31, and 33 through 40 only further patentably distinguish the unique building construction of independent claim 22 and are allowable for at least the reasons claim 22 is allowable.

Applicant respectfully submits that all pending claims are allowable and that the application is in condition for allowance. Favorable action thereon is respectfully requested. The Examiner is encouraged to contact the undersigned at her convenience should she have any questions regarding this matter or require any additional information. Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

Respectfully submitted,

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